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House of Representatives
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JANICE K. BREWER
SECRETARY OF STATE

CHAPTER 68

HOUSE BILL 2184

AN ACT

AMENDING SECTION 15-761, ARIZONA REVISED STATUTES; AMENDING TITLE 15, CHAPTER 7, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 15-761.01; RELATING TO SPECIAL EDUCATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-761, Arizona Revised Statutes, is amended to
3 read:

4 15-761. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Autism" means a developmental disability that significantly
7 affects verbal and nonverbal communication and social interaction and that
8 adversely affects educational performance. Characteristics include
9 irregularities and impairments in communication, engagement in repetitive
10 activities and stereotyped movements, resistance to environmental change or
11 change in daily routines and unusual responses to sensory experiences.
12 Autism does not include children with characteristics of emotional disability
13 as defined in this section.

14 2. "Child with a disability":

15 (a) Means a child who is at least three years but less than twenty-two
16 years of age, who has been evaluated pursuant to section 15-766 and found to
17 have at least one of the following disabilities and who, because of the
18 disability, needs special education and related services:

19 (i) Autism.

20 (ii) Emotional disability.

21 (iii) Hearing impairment.

22 (iv) Other health impairments.

23 (v) Specific learning disability.

24 (vi) Mild, moderate or severe mental retardation.

25 (vii) Multiple disabilities.

26 (viii) Multiple disabilities with severe sensory impairment.

27 (ix) Orthopedic impairment.

28 (x) Preschool moderate delay.

29 (xi) Preschool severe delay.

30 (xii) Preschool speech/language delay.

31 (xiii) Speech/language impairment.

32 (xiv) Traumatic brain injury.

33 (xv) Visual impairment.

34 (b) Does not include a child who has IF THE DETERMINANT FACTOR FOR THE
35 CLASSIFICATION IS ONE OR MORE OF THE FOLLOWING:

36 (i) A LACK OF APPROPRIATE INSTRUCTION IN READING, INCLUDING ESSENTIAL
37 COMPONENTS OF READING INSTRUCTION.

38 (ii) A LACK OF APPROPRIATE INSTRUCTION IN MATHEMATICS.

39 (iii) Difficulty in writing, speaking or understanding the English
40 language due to an environmental background in which a language other than
41 English is primarily or exclusively used.

42 3. "Due process hearing" means a fair and impartial administrative
43 hearing conducted by the state educational agency by an impartial
44 administrative law judge in accordance with federal and state law.

1 4. "Educational disadvantage" means a condition which has limited a
2 child's opportunity for educational experience resulting in a child achieving
3 less than a normal level of learning development.

4 5. "Eligibility for special education" means the pupil must have one
5 of the disabilities contained in paragraph 2 of this section and must also
6 require special education services in order to benefit from an educational
7 program.

8 6. "Emotional disability":

9 (a) Means a condition whereby a child exhibits one or more of the
10 following characteristics over a long period of time and to a marked degree
11 that adversely affects the child's performance in the educational
12 environment:

13 (i) An inability to learn which cannot be explained by intellectual,
14 sensory or health factors.

15 (ii) An inability to build or maintain satisfactory interpersonal
16 relationships with peers and teachers.

17 (iii) Inappropriate types of behavior or feelings under normal
18 circumstances.

19 (iv) A general pervasive mood of unhappiness or depression.

20 (v) A tendency to develop physical symptoms or fears associated with
21 personal or school problems.

22 (b) Includes children who are schizophrenic but does not include
23 children who are socially maladjusted unless they are also determined to have
24 an emotional disability as determined by evaluation as provided in section
25 15-766.

26 7. "Hearing impairment" means a loss of hearing acuity, as determined
27 by evaluation pursuant to section 15-766, which interferes with the child's
28 performance in the educational environment and requires the provision of
29 special education and related services.

30 8. "Home school district" means the school district in which the
31 person resides who has legal custody of the child, as provided in section
32 15-824, subsection B. If the child is a ward of the state and a specific
33 person does not have legal custody of the child, the home school district is
34 the district that the child last attended or, if the child has not previously
35 attended a public school in this state, the school district within which the
36 child currently resides.

37 9. "Impartial administrative law judge" means an administrative law
38 judge of the office of administrative hearings who is knowledgeable in the
39 laws governing special education and administrative hearings.

40 10. "Individualized education program" means a written statement, as
41 defined in 20 United States Code sections 1401 and 1412, for providing
42 special education and related services to a child with a disability.

43 11. "Individualized education program team" means a team whose task is
44 to develop an appropriate educational program for the child and has the same
45 meaning prescribed in 20 United States Code section 1414.

1 12. "Mental retardation" means a significant impairment of general
2 intellectual functioning that exists concurrently with deficits in adaptive
3 behavior and that adversely affects the child's performance in the
4 educational environment.

5 13. "Mild mental retardation" means performance on standard measures of
6 intellectual and adaptive behavior between two and three standard deviations
7 below the mean for children of the same age.

8 14. "Moderate mental retardation" means performance on standard
9 measures of intellectual and adaptive behavior between three and four
10 standard deviations below the mean for children of the same age.

11 15. "Multidisciplinary evaluation team" means a team of persons
12 including individuals described as the individualized education program team
13 and other qualified professionals who shall determine whether a child is
14 eligible for special education.

15 16. "Multiple disabilities" means learning and developmental problems
16 resulting from multiple disabilities as determined by evaluation pursuant to
17 section 15-766 that cannot be provided for adequately in a program designed
18 to meet the needs of children with less complex disabilities. Multiple
19 disabilities include any of the following conditions that require the
20 provision of special education and related services:

21 (a) Two or more of the following conditions:

22 (i) Hearing impairment.

23 (ii) Orthopedic impairment.

24 (iii) Moderate mental retardation.

25 (iv) Visual impairment.

26 (b) A child with a disability listed in subdivision (a) of this
27 paragraph existing concurrently with a condition of mild mental retardation,
28 emotional disability or specific learning disability.

29 17. "Multiple disabilities with severe sensory impairment" means
30 multiple disabilities that include at least one of the following:

31 (a) Severe visual impairment or severe hearing impairment in
32 combination with another severe disability.

33 (b) Severe visual impairment and severe hearing impairment.

34 18. "Orthopedic impairment" means one or more severe orthopedic
35 impairments and includes those that are caused by congenital anomaly, disease
36 and other causes, such as amputation or cerebral palsy, and that adversely
37 affect a child's performance in the educational environment.

38 19. "Other health impairments" means limited strength, vitality or
39 alertness, including a heightened alertness to environmental stimuli, due to
40 chronic or acute health problems which adversely affect a pupil's educational
41 performance.

42 20. "Out-of-home care" means the placement of a child with a disability
43 outside of the home environment and includes twenty-four hour residential
44 care, group care or foster care on either a full-time or part-time basis.

1 21. "Parent" means:

2 (a) Either a natural or adoptive parent of a child.

3 (b) A guardian, but not this state if the child is a ward of this
4 state.

5 (c) A person acting in the place of a natural or adoptive parent with
6 whom the child lives or a person who is legally responsible for the child's
7 welfare.

8 (d) A surrogate parent.

9 (e) A foster parent to the extent permitted by state law.

10 22. "Preschool child" means a child who is at least three years of age
11 but who has not reached the required age for kindergarten, subject to section
12 15-771, subsection G.

13 23. "Preschool moderate delay" means performance by a preschool child
14 on a norm-referenced test that measures at least one and one-half, but not
15 more than three, standard deviations below the mean for children of the same
16 chronological age in two or more of the following areas:

17 (a) Cognitive development.

18 (b) Physical development.

19 (c) Communication development.

20 (d) Social or emotional development.

21 (e) Adaptive development.

22 The results of the norm-referenced measure must be corroborated by
23 information from a comprehensive developmental assessment and from parental
24 input, if available, as measured by a judgment based assessment or
25 survey. If there is a discrepancy between the measures, the evaluation team
26 shall determine eligibility based on a preponderance of the information
27 presented.

28 24. "Preschool severe delay" means performance by a preschool child on
29 a norm-referenced test that measures more than three standard deviations
30 below the mean for children of the same chronological age in one or more of
31 the following areas:

32 (a) Cognitive development.

33 (b) Physical development.

34 (c) Communication development.

35 (d) Social or emotional development.

36 (e) Adaptive development.

37 The results of the norm-referenced measure must be corroborated by
38 information from a comprehensive developmental assessment and from parental
39 input, if available, as measured by a judgment based assessment or
40 survey. If there is a discrepancy between the measures, the evaluation team
41 shall determine eligibility based on a preponderance of the information
42 presented.

43 25. "Preschool speech/language delay" means performance by a preschool
44 child on a norm-referenced language test that measures at least one and
45 one-half standard deviations below the mean for children of the same

1 chronological age or whose speech, out of context, is unintelligible to a
2 listener who is unfamiliar with the child. Eligibility under this paragraph
3 is appropriate only if a comprehensive developmental assessment or
4 norm-referenced assessment and parental input indicate that the child is not
5 eligible for services under another preschool category. The evaluation team
6 shall determine eligibility based on a preponderance of the information
7 presented.

8 26. "Prior written notice" means written prior notice that a public
9 educational agency is required to send to parents whenever the public
10 educational agency proposes or refuses to initiate or change the
11 identification, evaluation or educational placement of a child with a
12 disability or the provision of a free appropriate public education.

13 27. "Public educational agency" means a school district, a charter
14 school, an accommodation school, a state supported institution or any other
15 political subdivision of this state that is responsible for providing
16 education to children with disabilities.

17 28. "Related services" means those supportive services, as defined in
18 20 United States Code section 1401, that are required to assist a child with
19 a disability who is eligible to receive special education services in order
20 for the child to benefit from special education.

21 29. "Residential special education placement" means the placement of a
22 child with a disability in a public or private residential program, as
23 provided in section 15-765, subsection G, in order to provide necessary
24 special education and related services as specified in the child's
25 individualized education program.

26 30. "Severe mental retardation" means performance on standard measures
27 of intellectual and adaptive behavior measures at least four standard
28 deviations below the mean for children of the same age.

29 31. "Special education" means specially designed instruction that meets
30 the unique needs of a child with a disability and that is provided without
31 cost to the parents of the child.

32 32. "Special education referral" means a written request for an
33 evaluation to determine whether a pupil is eligible for special education
34 services that, for referrals not initiated by a parent, includes
35 documentation of appropriate efforts to educate the pupil in the regular
36 education program.

37 33. "Specially designed instruction" means adapting the content,
38 methodology or delivery of instruction to address the unique needs of a child
39 with a disability and to ensure that child's access to the general curriculum
40 as identified in the academic standards adopted by the state board of
41 education.

42 ~~34. "Specific learning disability":~~

1 ~~(a) Means a specific learning disorder in one or more of the basic~~
2 ~~psychological processes involved in understanding or in using language,~~
3 ~~spoken or written, which may manifest itself in an imperfect ability to~~
4 ~~listen, think, speak, read, write, spell or do mathematical calculations.~~

5 ~~(b) Includes such conditions as perceptual disabilities, minimal brain~~
6 ~~dysfunction, dyslexia and aphasia.~~

7 ~~(c) Does not include learning problems which are primarily the result~~
8 ~~of visual, hearing, motor or emotional disabilities, of mental retardation or~~
9 ~~of environmental, cultural or economic disadvantage.~~

10 34. "SPECIFIC LEARNING DISABILITY" HAS THE SAME MEANING PRESCRIBED IN
11 20 UNITED STATES CODE SECTION 1401.

12 35. "Speech/language impairment" means ~~a communication disorder such as~~
13 ~~stuttering, impaired articulation, severe disorders of syntax, semantics or~~
14 ~~vocabulary, or functional language skills, or a voice impairment, as~~
15 ~~determined by evaluation pursuant to section 15-766, to the extent that it~~
16 ~~calls attention to itself, interferes with communication or causes a child to~~
17 ~~be maladjusted~~ MEANS "SPEECH OR LANGUAGE IMPAIRMENT" AS PRESCRIBED IN 34 CODE
18 OF FEDERAL REGULATIONS SECTION 300.8.

19 36. "State educational agency" means the Arizona department of
20 education.

21 37. "State placing agency" has the same meaning prescribed in section
22 15-1181.

23 38. "Surrogate parent" means a person who has been appointed by the
24 court pursuant to section 15-763.01 in order to represent a child in
25 decisions regarding special education.

26 39. "Traumatic brain injury":

27 (a) Means an acquired injury to the brain that is caused by an
28 external physical force and that results in total or partial functional
29 disability or psychosocial impairment, or both, that adversely affects
30 educational performance.

31 (b) Applies to open or closed head injuries resulting in mild,
32 moderate or severe impairments in one or more areas, including cognition,
33 language, memory, attention, reasoning, abstract thinking, judgment, problem
34 solving, sensory, perceptual and motor abilities, psychosocial behavior,
35 physical functions, information processing and speech.

36 (c) Does not include brain injuries that are congenital or
37 degenerative or brain injuries induced by birth trauma.

38 40. "Visual impairment" means ~~a loss in visual acuity or a loss of~~
39 ~~visual field, as determined by evaluation pursuant to section 15-766, that~~
40 ~~interferes with the child's performance in the educational environment and~~
41 ~~that requires the provision of special education and related services~~ HAS THE
42 SAME MEANING PRESCRIBED IN 34 CODE OF FEDERAL REGULATIONS SECTION 300.8.

43 41. "WARD OF THE STATE" HAS THE SAME MEANING PRESCRIBED IN 20 UNITED
44 STATES CODE SECTION 1401.

1 Sec. 2. Title 15, chapter 7, article 4, Arizona Revised Statutes, is
2 amended by adding section 15-761.01, to read:

3 15-761.01. Child with a disability: reclassification

4 A CHILD PREVIOUSLY CLASSIFIED AS A CHILD WITH A DISABILITY AS DEFINED
5 IN SECTION 15-761 SHALL NOT BE REMOVED FROM THAT CLASSIFICATION UNLESS THE
6 CHILD IS RE-EVALUATED PURSUANT TO SECTION 15-766 AND THE EVALUATION
7 DETERMINES THAT THE CHILD NO LONGER MEETS THE DEFINITION OF A CHILD WITH A
8 DISABILITY.

APPROVED BY THE GOVERNOR APRIL 16, 2007.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 16, 2007.